

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:)
Inquiry into Policies and Programs to)
Assure Universal Telephone Service in a)
Competitive Market Environment)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
RM 8388

**REPLY COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA) respectfully submits these reply comments on the Petition filed by MFS Communications (MFS) seeking commencement of an inquiry and an en banc hearing related to the maintenance of universal service in an era of broad competition. USTA filed comments on December 16, 1993, along with about 30 others.

USTA agreed with MFS that the Commission should examine the impacts of competition on universal service, and that it should take action to assure the continuation of universal service as access and local competition expands. USTA emphasized that the Commission should take action: to identify the nature of all support flows, implicit as well as explicit; to reassess today's mechanisms to assure continuation of necessary universal service support flows; and to facilitate equitable distribution of support responsibilities among all industry participants. Finally, USTA emphasized that the Commission should move ahead promptly and without delay on the issue of access reform. A proceeding on universal service issues can and should proceed concurrently with access reform, not ahead of it.

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I. ALL COMMENTERS SUPPORT THE COMMENCEMENT OF A PROCEEDING.

Every one of the comments made available to USTA supported initiation of a proceeding to reassess the nature and direction of necessary universal service support mechanisms. Indeed, many commenters stated that a proceeding should be started immediately, without delay.¹

There was some question as to whether the proceeding should be an inquiry or a rulemaking. Most commenters supported an inquiry, mainly because they endorsed generally the basic procedural steps suggested by the Petition. USTA did not make a firm recommendation as to the nature of the proceeding to be initiated, and instead focused on the fact that time should not be wasted, and that any delay should be presumptively unacceptable.

An inquiry has merit in that it would allow parties to develop information and address many facets of the issues, without being limited by a specific rule proposal that may already include some anticipatory decisions.² A rulemaking could avoid repetitious or additional comment cycles.³ Given the significance of the issues, initiation of an inquiry is an appropriate course if there is a concurrent commitment to move ahead expeditiously with all necessary rule changes thereafter.

¹ See US WEST at 1; NYNEX at 3.

² Indeed, universal service decisions are different from the issues of pricing and pricing structure that are ripe for rulemaking in the access reform area.

³ However, USTA opposes a rulemaking based on the proposals of MFS or Teleport. As shown below, many commenters oppose fundamental assumptions in these parties' suggestions. See, e.g., ICA at 2 (questions specific MFS points).

II. THERE ARE MANY QUESTIONS IDENTIFIED BY COMMENTERS THAT ARE NOT RECOGNIZED IN THE PETITION AND THAT MERIT ATTENTION.

As USTA stated in its comments, universal service issues cannot be solved simply by looking at exchange carrier cost allocation, entry barriers in the states, and retargeting of the universal service fund, as the Petition advocates.⁴ The scope of the issue is far wide, as many commenters recognized.

Of course, four of the areas identified in the Petition are significant: (1) what services or users require support; (2) what is the level of support needed; (3) what funding mechanisms will work best; and (4) how should support flow mechanisms be administered.⁵ There are many other questions to be addressed and resolved to achieve fundamental stability in handling universal service issues in the future.

Many other questions were posed across a number of the comments. For example, many commenters indicated a need to assure that funding is shared equitably.⁶ Others identified the need for examination of the continuing viability of any "carrier of last resort" mandate, as well as the need for an assessment of other regulatory burdens assumed by only one of a broader group of access and service competitors.⁷ A

⁴ Certainly, the basic claims made by Teleport - for example, that aggregate state revenues cover statewide total costs - do not address the matter of support flows. Statewide averages are often without meaning in this area, because they hide the customer group-to-customer group mismatches of cost and revenue that new entrants can exploit.

⁵ Pacific Bell and Nevada Bell at 3-4.

⁶ US WEST at 2; GTE at 4; NCTA at 2,7-8 (but rejects carrier of last resort under any circumstances); Rochester at 2; AT&T at 4; GCI at 3; ALTS at 3; Consumer Federation at 7; Alliance for Public Technology at 4; NRTA Exhibit A at 4.

⁷ Southwestern Bell at 16; Ameritech at 3-4. See also Bell Atlantic at 2.

weakness in the Teleport filing, for example, is its failure to recognize the likelihood of stranded investment and the impact on local rates with an asymmetric framework.

One exchange carrier, Bell Atlantic, listed a handful of various one-sided burdens that penalize exchange carriers in the marketplace. These included: provision of service below cost in higher cost areas; required construction of spare capacity without regulatory provision for current cost recovery; extensive regulatory compliance requirements;⁸ financing of regulator activities - as well as the staff and activities of consumer counsel, consumer consultants and even competitor certification;⁹ provision of 911 service where tax funding is not available; directory assistance and White Pages that are used by competitors; and a number of other items.¹⁰

These and other regulatory requirements generate a part of what is characterized as "implicit" support mechanisms. USTA's study, The \$20 Billion Impact of Local Competition in Telecommunications, by Calvin S. Monson and Jeffrey H. Rohlf (Strategic Policy Research, July 16, 1993) outlines how implicit support flows permeate the regulatory process and significantly and adversely affect exchange carriers. Policy that sets rates to achieve social objectives and ignores market reality can no longer

⁸ USTA was recently provided a copy of interrogatories addressed to BellSouth in Florida in Docket No. 920260-TL, in which the caption read "Staff's Forty-Fourth Set of Interrogatories" and the numbered interrogatory had reached 928. This is not unusual in state administrative practice. In contrast, the federal rules of civil procedure and many state litigation rules impose limits on such discovery activities, to reduce unnecessary paper flow and burdens on the parties.

⁹ Recently, C&P Telephone protested a D.C. Public Service Commission expectation that C&P should fund all of the cost of proceedings that were initiated to certify C&P's competing access providers in Washington.

¹⁰ Bell Atlantic at 8.

prevail. NTCA points out that the carriers didn't choose how total costs were covered, and that the process is controlled by regulators and political processes. One might see significantly different arrangements if carriers were able to exert more choice over how support flows are generated. Other commenters also point to the need both to identify all of these implicit support flows,¹¹ to replace them with explicit support, and to retarget that support.¹²

There is recognition that some amount of universal service support will remain necessary.¹³ Commenters also recognize that the current process is complex, and that solutions will not be simple.¹⁴ Prices of exchange carrier services must change to reflect retargeting and the anticipated loss in the contribution base in the absence of change.¹⁵ Also, some suggest that the roles of federal and state regulators must be altered so that the issues can be addressed in a concerted way.¹⁶

¹¹ NYNEX at 5 (explaining how implicit support of more than \$1 billion exists in its own access rates for residential access services, and also the unnecessarily high price that is required for interstate access in New York); Bell Atlantic at 1-3; GTE at 4-7; Rochester at 2; Hyperion Telecommunications at 3.

¹² Bell Atlantic at 3-6; GTE at 7; Rochester at 2; AT&T at 3; Cablevision Lightpath, et.al. at 4. See also Sprint at 4. In contrast, Teleport's proposal would not aid in retargeting because eligibility would be assumed in any designated support area. The claimed "wealthy" in rural areas would not be affected.

¹³ Consumer Federation at 7; NCTA at 2; BellSouth at 5; Citizens at 2-3; OPATSCO at 4-5; GCI at 3; Alliance for Public Technology, *passim*.

¹⁴ NECA at 2-3; Cathey Hutton at 2 (noting MFS' lack of understanding of the dynamics of rural area telephone service delivery); BellSouth at 4 (MFS proposal an administrative nightmare.)

¹⁵ Southwestern Bell at 17; ICC at 10.

¹⁶ Ameritech at 2-3; Pacific Bell and Nevada Bell at 4-5; ICA at 7-8.

There was disagreement over the compatibility of universal service and competition.¹⁷ That core issue was not even recognized by the alternative provider comments. Of course, many of these comments did not explain how the residential ratepayer would benefit in lower rates from new entry, when new entrants target their service to only the high-volume or affluent users.¹⁸

There was little discussion by new entrants of the mechanisms of rural delivery, and some commenters disagreed with the Petition's assumptions about the right mechanism for addressing universal service in the future, often in strong terms.¹⁹

Other questions raised at this stage dealt with whether universal service should deal with the generation of support for access as opposed to specific telecommunications services,²⁰ promotion of infrastructure-sharing related incentives,²¹ and how eligibility could ever be accommodated in areas where there may be multiple providers.²² Certainly, this represents the tip of the policy iceberg.

¹⁷ Compare Rochester at 1 with OPASTCO at 3.

¹⁸ See comments of Teleport. The same defect pervades the CFA comments.

¹⁹ NRTA, *passim*; Cathey Hutton at 2 and 8; OPASTCO at 4-7 (addressing rural rate efficiencies and match of lower price with lessened local connectivity); Southwestern Bell at 5 (MFS position on local service is unclear); BellSouth at 4 (MFS lacks concern for rural areas); Alliance for Public Technology (study); Consumer Federation at 5 (rejects support that is directed only at individuals).

²⁰ US WEST at 7; Rochester at 4.

²¹ Alliance for Public Technology at 3; NRTA Exhibit A at 4.

²² Teleport at 4 (claims that all carriers should have "equal access" to support; however, Teleport ignores the impact of "carrier of last resort" status on this type of analysis.) Also, Teleport views "support" as an asset, while it is in reality a mostly internal set of procedures that are not externally viable cash flows. Indeed, Teleport cannot assure that it would provide any better pricing or targeting, even if it were a

There are many questions to be resolved in a comprehensive proceeding. A few commenters suggested that the items raised in the Petition should be addressed in the upcoming Federal-State Joint Board proceeding.²³ Regardless of whether it is addressed there or elsewhere, there is a recognition that action would be of benefit.

III. THE COMMISSION SHOULD REJECT SUGGESTIONS FOR DELAY AND SHOULD MOVE AHEAD ON ACCESS REFORM PROMPTLY.

Many commenters stated that any action on universal service should not delay access reform.²⁴ USTA stated that, notwithstanding any decision on the MFS Petition, access reform in the manner suggested by USTA should proceed promptly. No action of the Commission in response to the MFS Petition should hold up fundamental access reform. There is no need to wait, because the USTA-proposed access framework is flexible enough to accommodate multiple universal service solutions.

As USTA's comments stated, competitive access service issues require expeditious treatment of USTA's access reform proposal. Structural reforms are required in the handling of interstate access to address the technological changes that have taken place and that are continuing to occur.

recipient of high cost support. Under its proposal, Teleport could obtain an unearned windfall by keeping the same support payment as a competing exchange carrier without reducing rates by any meaningful amount. Teleport and others reject any universality obligation even as they seek the universality insurance that high cost and other related support mechanisms represent.

²³ Staurulakis at 2; NECA at 4.

²⁴ GTE at 3; Rochester at 5; NYNEX at 3; BellSouth at 2 (affirmatively rejecting any proposal that action should be completed here prior to access reform); Bell Atlantic at 1; among others.

USTA rejects the self-serving suggestion of Hyperion Telecommunications that action here should be completed before any action is taken on access reform.²⁵ Competitive and technological reality make that impracticable. It would manifestly defeat the public interest, as the harm in the marketplace to exchange carriers and their customers would be irreversible. Benefits that should be flowing now, in additional access options and lower rates, will be delayed indefinitely.


USTA suggested that both universal service and access reform activities could proceed simultaneously. There is no reason for one to delay the other. In each case, prompt action is both appropriate and necessary.

IV. CONCLUSION.

The Commission should take action consistent with USTA's comments and with these reply comments.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

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December 30, 1993

²⁵ Hyperion Telecommunications at 3.

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